IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

WEDNESDAY, THE 6TH JUNE 2007 / 16TH JYAISHTA 1929

MFA.No. 98 of 1995(B)

OPMV.304/1985 of MOTOR ACCIDENT CLAIMS TRIBUNAL, KOTTAYAM
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APPELLANT:

JANARDANAN, VAZHAKARUVELIL HOUSE,
ALANTHURUTHY P.O., KAVUMBHAGOM, THIRUVALLA.F

BY ADV. SRI.MVS.NAMBOOTHIRY

RESPONDENTS:
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1. **JOLLY, S/O. POTHEN, KULATHMUKAL HOUSE, KAKKAMTHODU, VAZHAPPALLY EAST, CHANGANACHERRY.**

2. **MARY PHILIP, MADAMTHOTTU HOUSE, RAILWAY STATION ROAD, CHANGANACHERRY.**

3. **THE NEW INDIA ASSURANCE CO. REPRESENTED BY ITS MANAGER, CHANGANACHERRY BRANCH, CHANGANACHERRY.**

BY ADV. SRI.JOHN VARGHESE
SRI.A.R.GEORGE
SRI.JOMY GEORGE
SRI.JOHN JOSEPH
SRI.T.SAJI

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 06/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K. PADMANABHAN NAIR, J.

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M.F.A. NO. 98 OF 1995

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Dated this the 6th day of June, 2007

J U D G M E N T

Heard. Admitted. The appeal itself is heard and disposed of as agreed to by both parties.

2. Petitioner-appellant met with an accident on 6.1.1984 and sustained injuries. He filed a claim petition. That was dismissed on 10.6.1986. So the petitioner filed an application, I.A. No.4995 of 1990, for restoration of the petition, after a lapse of 4 years and 5 months. Tribunal dismissed that application also. Challenging that order, this appeal is filed and that too with a delay of 3147 days. Admittedly, petitioner was represented by a lawyer. So there was no justification on the part of the petitioner in not making enquiries regarding the progress of the case. But considering the fact that he met with an accident and sustained injuries, I am of the view that one more opportunity can be granted to the petitioner to get the petition disposed of on merits. But for the same the respondents cannot be saddled with the liability of paying interest for the interregnum period. So I

make it clear that in case the petitioner is able to establish that he is entitled to compensation, he will not be given any interest from 10.6.1986, the date of dismissal of Original Petition till date of restoration.

In the result, the appeal is allowed. The award passed by the Tribunal dismissing I.A. No.4995 of 1990 in O.P(MV) No.304 of 1985 is set aside. That petition is allowed and O.P (MV) No.304 of 1985 is restored to file. There will be a direction to the Tribunal to take O.P(MV) No.304 of 1985 back to file and dispose of the same afresh in accordance with law, with notice to the respondents, as expeditiously as possible, at any rate, within six months from the date of receipt of a copy of this judgment. I make it once again clear that in case the petitioner succeeds in the petition and able to establish that he is entitled to compensation, he will not be awarded any interest from the date of dismissal of the Original Petition till date of restoration.

K. PADMANABHAN NAIR, JUDGE.

vsv

K. PADMANABHAN NAIR, J.

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M.F.A. 98 OF 1995

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J U D G M E N T

6TH JUNE, 2007